

# EUROPEAN PARLIAMENT

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## **POSITION OF THE EUROPEAN PARLIAMENT**

adopted at first reading on 11 July 2007 with a view to the adoption of Directive 2007/.../EC of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (EP-PE\_TC1-COD(2006)0196)

PE 391.168

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## POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 11 July 2007

**with a view to the adoption of Directive 2007/.../EC of the European Parliament and of the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2), Article 55 and Article 95 thereof,

Having regard to the proposal from the Commission  $\parallel$ ,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>3</sup>,

Whereas:

- (1) The Council in its Resolution of 7 February 1994 on the development of Community Postal Services<sup>4</sup> identified as one of the main objectives of Community postal policy the reconciling of the gradual, controlled opening to competition of the postal market with a sustainable guarantee of  $\parallel$  universal service *provision*.

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<sup>1</sup> OJ C 168, 20.7.2004, p. 74.

<sup>2</sup> OJ C 197, 24.8.2004, p. 37.

<sup>3</sup> Position of the European Parliament of 11 July 2007.

<sup>4</sup> OJ C 48, 16.2.1994, p. 3.

- (2) Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service<sup>1</sup>, established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service and the setting of maximum limits for the postal services which Member States may reserve to their universal service provider(s) with a view to the maintenance of the universal service, to be reduced in a gradual and progressive way, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating a single market in postal services.
- (3) Article 16 of the || Treaty highlights the *place occupied* by services of general economic interest in the shared values of the *European Union* as well as their role in promoting social and territorial cohesion. It states that care should be taken that such services operate on the basis of principles and conditions which enable them to fulfil their missions.
- (4) ***The positive role played by services of general economic interest was emphasised by Special Eurobarometer 219 of October 2005 which indicated that postal services are the most appreciated services of general economic interest according to users throughout the EU, with 77 % of people questioned responding positively.***
- (5) ***Since they constitute an essential instrument for communication and information exchange, postal services fulfil a vital role which contributes to the objectives of social, economic and territorial cohesion in the EU.***
- (6) The measures in this area should be designed in such a way that the tasks of the Community pursuant to Article 2 of the || Treaty, namely || to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States, are achieved as objectives.

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<sup>1</sup> OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 || (OJ L 284, 31.10.2003, p. 1).

- (7) *European postal markets have undergone dramatic changes in recent years, a development that has been propelled by technological advancements and increased competition resulting from deregulation. Due to globalisation, it is essential to take a pro-active, pro-development stance so as not to deprive EU citizens of the benefits of such changes.*
- (8) In its Conclusions concerning the mid-term review of the Lisbon Strategy the European Council of 22 and 23 March 2005 re-stated the importance of completing the internal market as an instrument to foster growth and create more and better jobs and the important role that effective services of general economic interest have to play in a competitive and dynamic economy. These conclusions remain applicable to postal services, as an essential instrument of communication, trade, and social and territorial cohesion.
- (9) The European Parliament Resolution of 2 February 2006 *on the application of the Postal Directive*<sup>1</sup> highlighted the social and economic importance of efficient postal services and their important role in the framework of the Lisbon Strategy, indicating that reform measures undertaken so far have brought about significant positive developments in the postal sector, along with increased quality, more efficiency and better customer-orientation. *In its resolution, the European Parliament called on the Commission, in view of the sometimes perceptibly divergent developments in universal service obligations in the Member States, to concentrate in particular, when drawing up its prospective study, on the quality of the universal service provided and on its future funding and to propose, in the context of that study, a definition, scope and appropriate financing for the universal service. It also noted that postal networks have irreplaceable territorial and social dimensions which make universal access to essential local services possible.*

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<sup>1</sup> OJ C 288 E, 25.11.2006, p. 77.

- (10) In accordance with Directive 97/67/EC, a prospective study assessing, for each Member State, the impact on *the* universal service of the full accomplishment of the internal market *for postal services* in 2009 has been carried out. The Commission has also undertaken a thorough review of the Community postal sector, including the commissioning of studies on the economic, social and technological developments in the sector, and has consulted extensively with interested parties.
- (11) ■ *The* prospective study ***claims that*** the basic aim of safeguarding the sustainable provision of a universal service matching the standard of quality defined by the Member States in accordance with Directive 97/67/EC, can be secured throughout the Community by 2009 without the need for a reserved area.
- (12) The progressive and gradual opening of postal markets to competition has provided universal service providers with sufficient time to put in place the necessary modernisation and restructuring measures required to ensure their long-term viability under || new market conditions, and *has* enabled Member States to adapt their regulatory systems to a more open environment. Member States may furthermore avail themselves of the opportunity offered by the period of transposition, as well as the substantial time necessary for the introduction of effective competition, *in order* to proceed with further modernisation and restructuring of the universal service providers as necessary.
- (13) The prospective study shows that the reserved area should no longer be the preferred solution for the financing of the universal service. This assessment takes into account the interest of the Community and its Member States in the accomplishment of the internal market and its potential for delivering growth and employment, as well as ensuring the availability of an efficient service of general economic interest for all users. ■

- (14) There are a number of drivers *of* change within the postal sector, notably demand and changing customer needs, organisational change, automation and *the* introduction of new technologies, substitution by electronic means of communication and market opening. ***In order to meet competition, cope with new consumer requirements and secure new sources of funding, postal service providers may diversify their activities by providing electronic business services or other information society services.***
- (15) ***Postal service providers, including the designated universal service providers, are being spurred on to improve efficiency as a result of new competitive challenges which differ from the traditional postal services (such as digitalisation and electronic communications) and this will in itself contribute to a major increase in competitiveness.***
- (16) ***The progressive opening up of the market can, if carefully prepared, help to expand the overall size of the postal markets; it can further contribute, under conditions ensuring competitive neutrality, to maintaining sustainable and quality employment within universal service providers as well as to facilitating the creation of new jobs in other operators, new entrants and associated economic activities. This Directive is without prejudice to the competence of Member States to regulate employment conditions in the postal services sector which should not, however, lead to unfair competition. Social considerations, with particular regard to staff previously engaged in the provision of postal services, should be taken into due account when preparing the opening up of the postal market.***
- (17) Increased competitiveness should furthermore enable the postal sector to be integrated with alternative methods of communication and allow the quality of the service provided to ever-more demanding users to be improved. ***Further market opening will continue to benefit consumers and small and medium-sized enterprises in particular, both as senders and as recipients of mail, by bringing about an improvement in quality, wider choice, passed-on price reductions, innovative services and business models. The postal market of today forms part of a larger market for messages, including electronic messages, which should be taken into consideration when evaluating the market.***

- (18) *The rural postal network in, inter alia, mountain and island regions, plays an essential role in integrating businesses into the national/global economy and in maintaining cohesion in social and employment terms. Furthermore, rural post offices in mountain and island regions can provide an essential infrastructure network for universal access to new telecommunications technologies.*
- (19) The developments in the neighbouring communications markets have had a varied impact in different regions of the Community and segments of the population and *on* the use of postal services. Territorial and social cohesion should be maintained ¶ and, taking into account that Member States may adapt some specific service features to accommodate local demand by applying flexibility provided *for* in Directive 97/67/EC, it is appropriate to fully maintain the universal service and the associated quality requirements set out in the said Directive. In order to ensure that market opening continues to benefit all users, in particular consumers and small and *medium-sized* enterprises, Member States must monitor and supervise market developments. They must take appropriate regulatory measures, available under the Directive, to ensure that accessibility to postal services continues to satisfy the needs of users including, by ensuring, where appropriate, a minimum number of services at the same access point *and, in particular, that there is no decline in the density of access points to postal services in rural and remote regions. At the same time, the Member States should introduce and enforce appropriate penalties for service providers in the event of non-compliance with their obligations.*
- (20) *The universal service assured by Directive 97/67/EC guarantees one clearance and one delivery to the home or premises of every natural or legal person every working day, even in remote or sparsely populated areas.*
- (21) *The term 'users' includes individual consumers and commercial entities using universal services, unless otherwise stated in Directive 97/67/EC.*

- (22) *The provision of high-quality postal services contributes significantly to attaining the objective of social and territorial cohesion. E-commerce, in particular, offers new opportunities for remote and sparsely populated areas to participate in economic life for which the provision of good postal services is an important precondition.*
- (23) Directive 97/67/EC established a preference for the provision of the universal service through the designation of universal service providers. The development of greater competition and choice means that Member States should *be given* further flexibility to determine the most efficient and appropriate mechanism to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion necessary to ensure the free provision of postal services in the internal market. Member States may apply one or a combination of the following: *the* provision of the universal service *according to* market forces, *the* designation of one or several undertakings to provide different elements of *the* universal service or to cover different parts of the *national* territory and public procurement of services. ***In the event that a Member State decides to designate one or more undertakings for the provision of the universal service, or for the provision of the various components of the universal service, it must be ensured that the quality requirements of the universal service are also complied with by other universal service providers.***
- (24) It is important for users to be fully informed *of* the universal services provided and for undertakings providing postal services to be informed about the rights and obligations of universal service provider(s). Member States shall ensure that consumers remain fully informed *of* the features and *of* accessibility to the specific services provided. ***National regulatory authorities should monitor that all such information is made available.*** It is however appropriate, in *line* with the enhanced flexibility of Member States to ensure the provision of the universal service in ways other than the designation of the universal service provider(s), to allow Member States flexibility to decide how this information is *to be* made available to the public.



- (25) In the light of the studies carried out and with a view to unlocking the full potential of the internal market for postal services, it is appropriate to end the use of the reserved area and special rights as a way of ensuring the financing of the universal service. ***In view of the situation in Member States it is appropriate to establish the end of 2010 as the final date for the removal of exclusive rights in the postal sector.***
- (26) The external financing of the residual net costs of *the* universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available *in order* to ensure the financing of the universal service, to the extent that this is needed and is adequately justified, while leaving Member States the choice of the financing mechanisms to be used. These alternatives include the use of public procurement procedures, ***including directly negotiated procedures***, and, whenever universal service obligations entail net costs of universal service and represent an unfair burden for the designated undertaking, public compensation and cost sharing between service providers and/or users in a transparent fashion by means of contributions to a compensation fund. Member States may use other means of financing permitted by Community *law*, such as deciding that the profits accruing from other activities of the universal service providers, outside the scope of the universal service, are to be assigned in whole or in part to the financing of the net costs of the universal service, as long as they are compatible with *Directive 97/67/EC*. ***Without prejudice to the obligation of Member States to uphold the rules of the Treaty applicable to state aid, Member States should notify the Commission of their plans as regards the financing of any net costs of the universal service, which should be reflected in the regular report that the Commission presents to the European Parliament and the Council on the application of Directive 97/67/EC.***

- (27) ***Undertakings offering services which are substitutable for the universal service should be required to contribute to the financing of the universal service in cases where provision is made for a compensation fund.*** In order to determine which undertakings ***are concerned***, Member States should consider whether the services provided by such undertakings may, from a user's perspective, be regarded as substitutable *for* universal services, taking into account the characteristics of the services, including added value features, and their intended use. In order to be considered substitutable, the services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage, ***provided that they cover at least one of the features of the services provided under the universal service; express and courier services are not considered as services that are substitutable for the universal service.*** In order to comply with the principle *of proportionality* when determining the contribution to the costs of *providing the universal service* in a Member State *requested* from these undertakings, Member States should use transparent and non-discriminatory criteria. ■
- (28) The principles of transparency, non-discrimination and proportionality *provided for* in Directive 97/67/EC must continue to be applied to any financing mechanism and any decision in this area *must* be based on transparent, objective and verifiable criteria. In particular, the net cost of *the universal service* is to be calculated, under the responsibility of the national regulatory authority, as the difference between the net costs for a designated undertaking operating *under* the universal service obligations and operating without the universal service obligations. The calculation shall take into account all other relevant elements, including any market benefits which accrue to an undertaking designated to provide *the universal service*, the entitlement to a reasonable profit and incentives for cost efficiency. ***In order to avoid legal uncertainty and to ensure a level playing field, the Commission should issue detailed guidance as to how the net cost of the universal service is to be calculated.***

- (29) *It is appropriate to provide those Member States that have joined the postal reform process at a late stage, or Member States with a particularly difficult topography, especially those with a huge number of islands, with the possibility of an additional transitional period of two years for the removal of exclusive and special rights, subject to notification to the Commission. Taking into account this exceptional period, it is also appropriate, within a limited time frame and for a limited number of services, to allow those Member States that have completely opened up their markets to refuse monopolies operating in another Member State authorisation to operate in their own territory.*
- (30) Member States should be allowed to use *general authorisations* and individual *licences* whenever justified and proportionate to the objective pursued. However, as highlighted by the third Report on the Application of Directive 97/67/EC, further harmonisation of the conditions that may be introduced appears necessary *in order* to reduce unjustified barriers to the provision of services in the internal market. In this context, Member States may for example allow undertakings *that provide services within the scope of the universal service, or services considered to be possible substitutes*, to choose between the obligation to provide a service or to contribute financially to the costs of this service provided by another undertaking, but should no longer be allowed to impose the concurrent requirement to contribute to a sharing mechanism and the imposition of universal service or quality obligations that are intended to serve the same purpose. It is also appropriate to clarify that some of the provisions on *general authorisations* and *individual* licensing should not apply to designated universal service providers.

- (31) In an environment where several postal undertakings provide services within the universal service area, it is appropriate to require all Member States to assess whether some elements of the postal infrastructure or certain services generally provided by universal service providers should be made accessible to other operators providing similar services, in order to promote effective competition, and/or protect users and consumers by ensuring the overall quality of the postal service. ***Where several universal service providers with regional postal networks exist, Member States should also assess and, where necessary, ensure their inter-operability in order to prevent impediments to the prompt transport of postal items.*** As the legal and market situation of these elements or services is different in Member States it is appropriate to only require Member States to adopt an informed decision on the need, extent and choice of the regulatory instrument, including where appropriate on cost sharing. This provision is without prejudice to the right of Member States to adopt measures to ensure access to the public postal network under conditions of transparency and non-discrimination.
- (32) Given the importance of postal services for blind and partially sighted persons, it is appropriate to confirm that ***in a competitive and liberalised market there should be an obligation for Member States to ensure the provision of*** free services for blind and partially sighted persons. ■
- (33) In a ***highly*** competitive environment, it is important ***to ensure that universal service providers are given the pricing flexibility necessary to guarantee a financially viable universal service provision. It is, therefore, important to ensure that Member States only impose tariffs departing from*** the principle that prices reflect normal commercial ***demand*** and costs ***in limited cases***. This objective is achieved by continuing to allow Member States to maintain uniform tariffs for single piece tariff mail, the service most frequently used by consumers and small and *medium-sized* enterprises. Individual Member States may also maintain uniform tariffs for some other mail items *in order* to protect general public *interests*, such as access to culture *and* regional and social cohesion. ***The principle of cost-oriented pricing should not prevent operators responsible for providing the universal service from applying uniform tariffs for services provided as part of that universal service.***

- (34) *It is necessary for the provision, by universal service providers of services for businesses, bulk mailers and consolidators of mail from different customers, to be subject to more flexible tariff conditions.*

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- (35) In view of the transition towards a fully competitive market *and in order to ensure that cross-subsidies from universal services to non-universal services do not adversely affect the competitive advantage of the latter*, it is appropriate to continue to require Member States to maintain the obligation on universal service providers of keeping separate and transparent accounts, subject to the necessary adaptations. This obligation should provide national regulatory authorities, competition authorities and the Commission with the information necessary to adopt decisions related to the universal service and to monitor fair market conditions until competition becomes effective. Cooperation between national regulatory authorities in continuing to develop benchmarks and guidelines in this area || should contribute to the harmonised application of these rules.
- (36) In line with existing rules in other service areas and in order to enhance consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to *increasing* the effectiveness of complaint handling procedures, it is appropriate that || Directive 97/67/EC encourage the use of out-of-court settlement procedures as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes<sup>1</sup> and Commission Recommendation 2001/310/EC of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes<sup>2</sup>. Consumer interests would also be furthered through || enhanced inter-operability between operators resulting from access to certain elements of infrastructure and services, and the requirement for cooperation between national regulatory authorities and consumer protection bodies. *In order to protect the interests of postal users in the event of theft or loss of, or damage to, postal items, Member States should introduce a system of reimbursement and/or compensation.*

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<sup>1</sup> OJ L 115, 17.4.1998, p. 31.

<sup>2</sup> OJ L 109, 19.4.2001, p. 56.

- (37) It is appropriate to *amend* the provision concerning implementing powers so as to reflect the amendments made to Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>1</sup>.
- (38) ***The committee assisting with the implementation of Directive 97/67/EC should monitor the development of measures taken by the Member States to guarantee the universal service, and in particular the current and foreseeable effects of such measures on social and territorial cohesion. Given the particular importance that the opening up of the market in postal services has in terms of regional cohesion, that committee should comprise representatives not only of the Member States but also of local and regional authorities of every Member State.***
- (39) The role of national regulatory authorities is likely to remain crucial, in particular in those Member States where the transition to competition still needs to be completed. In accordance with the principle of separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authorities thereby ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States and to the principle of neutrality with regard to the rules in Member States governing the system of property or ownership laid down in Article 295 of the Treaty. National regulatory authorities should be endowed with all necessary resources, in terms of staffing, expertise and financial means, for the performance of their tasks.
- (40) Due to the frequent involvement of different national bodies in the exercise of regulatory and operational functions, it is appropriate to introduce transparency in the allocation of tasks and require the different responsible bodies in charge of sector regulation, the application of competition rules and consumer issues to cooperate in order to ensure the effective accomplishment of their tasks.

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<sup>1</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (41) Any party *that* is the subject of a decision by a national regulatory authority should have the right to appeal to a body that is independent of that authority. This body may be a court. This appeal procedure is without prejudice to the division of competences within national judicial systems and to the rights of legal entities or natural persons under national law. Pending the conclusion of these procedures there is a need to ensure the temporary standing of national regulatory authorities' decisions *in order* to guarantee legal and market *certainty*.
- (42) National regulatory authorities should ■ coordinate their actions with the regulatory bodies of other Member States and with the Commission *when* carrying out their tasks under *Directive 97/67/EC*. This would promote the development of the internal market for postal services and help to achieve consistent application, in all Member States, of the provisions set out in *the Directive*, in particular in areas where national law implementing Community law gives national regulatory authorities considerable discretionary powers in *the* application of the relevant rules. This cooperation could take place, *inter alia*, in the Committee established by *the Directive* or in a group comprising European regulators. Member States should decide which bodies are national regulatory authorities for the purposes of *the Directive*.
- (43) National regulatory authorities need to gather information from market players in order to carry out their tasks effectively. Requests for information should be proportionate and not impose an undue burden on undertakings. Such information may also need to be gathered by the Commission *in order* to allow it to fulfil its obligations under Community *law*.
- (44) In order to keep the European Parliament and the Council informed *of* the development of the internal market for postal services, the Commission should regularly submit reports to those institutions on the application of Directive 97/67/EC.
- (45) ***The Commission should provide assistance to the Member States on the different aspects of the implementation of this Directive.***

- (46) *This Directive does not affect the terms and conditions of employment, including maximum work periods and minimum rest periods, minimum paid annual holidays, minimum rates of pay as well as health, safety and hygiene at work, which Member States apply in compliance with Community law, nor does it affect relations between social partners, including the right to negotiate and conclude collective agreements, the right to strike and to take industrial action in accordance with national law and practices which are in conformity with Community law, nor does it apply to services provided by temporary work agencies. If appropriate, Member States may reflect working conditions in their authorisation procedures.*
- (47) *Member States should ensure that sufficient points of contact and access points are established that take account of the needs of users in rural and sparsely populated areas. Member States should determine the minimum number of points of contact and access points in these areas in order that the universal service can be guaranteed.*
- (48) In order to confirm the framework for the regulation of the sector the date of expiry of Directive 97/67/EC should be deleted. *The provisions that have not been amended by this Directive should continue to apply. The services that Member States may continue to reserve, during a transitional period, are those specified in Article 7a of Directive 97/67/EC.*
- (49) Since the objectives of the proposed action, namely achieving an internal market for postal services, safeguarding a common level of universal service for all users and setting harmonised principles for the regulation of postal services, cannot be sufficiently achieved by Member States *acting alone* and can therefore by reason of the scale and effects of the action to be taken, be better achieved at Community level, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (50) Directive 97/67/EC should therefore be amended accordingly.



- (51) This Directive is consistent with other current Community instruments concerning services. If this Directive comes into conflict with a provision of another Community instrument, in particular Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market<sup>1</sup>, the present Directive and its provisions shall prevail and fully apply to the postal sector.
- (52) This Directive is without prejudice to the application of the Treaty rules on competition and on the freedom to provide services. Insofar as financing mechanisms would involve aid granted by a Member State or through state aid resources in any form whatsoever within the meaning of Article 87(1) of the Treaty, this Directive is without prejudice to *the obligation of Member States to uphold* the State aid rules of the Treaty,

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 97/67/EC is hereby amended as follows:

- (1) In Article 1, the second indent *shall be* replaced by the following:
- "- the conditions governing the provision of postal services,"
- (2) Article 2 *shall be* amended as follows,
- (a) point 6 *shall be* replaced by the following:
- "6. postal item: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value;"

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<sup>1</sup> OJ L 376, 27.12.2006, p. 36.

(b) *point 19, paragraph 1, shall be replaced by the following:*

***"19. essential requirements: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods and respect for the terms and conditions of employment and social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners and, where justified, data protection, environmental protection and regional planning."***

(c) *the following point shall be added:*

***"20. services provided at single piece tariff: postal services for which the tariff is set in the general terms and conditions of universal service providers for the transport of individual postal items."***

(3) In the first subparagraph of Article 3(3), the introductory wording *shall be* replaced by the following:

***"Member States shall take steps to ensure that the universal service is guaranteed every working day and not less than five days a week, save in circumstances or geographical conditions deemed exceptional by the national regulatory authorities, and that it includes as a minimum:"***

(4) Article 4 *shall be* replaced by the following:

***"Article 4***

***1. Each Member State shall ensure that the provision of the universal service is guaranteed and shall notify the Commission of the steps it has taken to fulfil this obligation. The Committee established under Article 21 shall be informed of, and monitor, the development of the measures established by Member States in order to ensure the provision of the universal service.***

2. Member States may choose to designate one or more undertakings as universal service providers for a part or all of the national territory and for different elements of *the* universal service. When they do so, they shall determine, in accordance with Community law, the obligations and rights assigned to them and shall publish these obligations and rights. In particular, Member States shall take measures to ensure that the conditions under which universal services are entrusted are based on objective, non-discriminatory, proportionate and least market distortion principles, and that the designation of undertakings as universal service providers is limited in time. Member States shall notify the identity of the universal service provider(s) they designate to the Commission."

(5) In Article 5(2), "Articles 36 and 56" *shall be* replaced by "Articles 30 and 46".

(6) Article 6 *shall be* replaced by the following:

"Article 6

Member States shall take steps to ensure that users and undertakings providing postal services are regularly given sufficiently detailed and up-to-date information ***by the universal service provider(s)*** regarding the particular features of the universal services offered, with special reference to the general conditions of access to these services as well as to prices and quality standard levels. This information shall be published in an appropriate manner.

Member States shall notify the Commission of how the information to be published in accordance with the first *paragraph* is being made available."

(7) In Chapter 3, the title *shall be* replaced by the following:

"CHAPTER 3

***Guaranteed financing*** of universal services".

- (8) Article 7 *shall be replaced by the following:*

"Article 7

1. With effect from **31 December 2010** Member States shall not grant or maintain in force exclusive or special rights for the establishment and the provision of postal services. Member States may finance the provision of universal services in accordance with one or more of the means provided for in *paragraphs 3, 4 and 5*, or in accordance with any other means compatible with the || Treaty.

**2. Each Member State shall ensure that the financing of the universal service is guaranteed at all times in a fully liberalised postal market. Each Member State shall notify the Commission of the steps it intends to take in order to fulfil this obligation.**

3. Member States may ensure the provision of *the* universal services by procuring such services in accordance with applicable public procurement rules **and regulations, including the possibility of directly negotiating and concluding service contracts with service providers.**

4. Where a Member State determines that the universal service obligations, as provided for by this Directive, entail a net cost and represent an unfair financial burden for the universal service provider(s), ***it shall put into operation one of the mechanisms detailed in its national plan notified to the Commission by 1 January 2010 and which formed part of the Commission's report to the European Parliament and the Council.***

***The national plans may:***

- (a) *introduce* a mechanism to compensate the undertaking(s) concerned from public funds;

- (b) *introduce a mechanism for the sharing of the net cost of universal service obligations between providers of services and/or users.*

5. Where the net cost is shared under *paragraph 4(b)*, Member States may establish a compensation fund which may be funded by service providers' and/or users' fees, *and which is to be administered for this purpose by a body independent of the beneficiary or beneficiaries.* Member States may make the granting of authorisations to service providers under Article 9(2) subject to an obligation to make a financial contribution to that fund or to comply with universal service obligations. Only those services set out in Article 3 may be financed in this way.

6. Member States shall ensure that the principles of transparency, non-discrimination and proportionality are *upheld when* establishing the compensation fund and when fixing the level of the financial contributions referred to in *paragraphs 4 and 5.* Decisions taken under *paragraphs 4 and 5* shall be based on objective and verifiable criteria and be made public."

- (9) ***The following Article 7a shall be inserted:***

***"Article 7a***

***To the extent necessary for ensuring the maintenance of the universal service, Member States that have acceded to the EU after the entry into force of Directive 2002/39/EC\* or Member States with a small population and a limited geographical size, and therefore having specific characteristics that are particular to postal services, or Members States with a particularly difficult topography, especially those with a huge number of islands, may continue, until 31 December 2012, to reserve services to universal service provider(s) within the following limits and conditions:***

- (a) *those services shall be limited to the clearance, sorting, transport and delivery of items of domestic correspondence and incoming cross-border correspondence, whether by accelerated delivery or not, within both of the following weight and price limits. The weight limit shall be 50 grams. This weight limit shall not apply if the price is equal to, or more than, two and a half times the public tariff for an item of correspondence in the first weight step of the fastest category.*

*To the extent necessary to ensure the provision of the universal service, direct mail may continue to be reserved within the same weight and price limits.*

*To the extent necessary to ensure the provision of the universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits.*

- (b) *Member States that intend to use this exceptional transition facility shall notify the Commission of their intention to do so three months before the date laid down in Article 2(1) of Directive ... [amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services].*
- (c) *Member States that abolish their reserved areas after ...<sup>1</sup> and before 31 December 2012 may, during that transitional period, refuse to grant the authorisation provided for in Article 9(2) for services within the abolished reserved area in question to postal operators providing services within the scope of the universal service, and to companies controlled by them, which are granted a reserved area in another Member State.*

\* *OJ L 176, 5.7.2002, p. 21"*

- (10) *Article 8 shall be replaced by the following:*

*"Article 8*

*The provisions of Article 7 shall be without prejudice to the right of Member States to:*

- incorporate special provisions into their national legislation applicable to universal service providers, according to objective, proportionate and non-discriminatory criteria, as necessary for the operation of the universal service;*

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<sup>1</sup> *OJ: date of entry into force of this Directive*

- ***organise, in accordance with their national legislation, the siting of letter boxes on the public highway, the issue of postage stamps and the registered mail service used in the course of judicial or administrative procedures, as necessary for the provision of the universal service."***

(11) In Chapter 4, the title *shall be* replaced by the following:

"CHAPTER 4

Conditions governing the provision of postal services and access to the network".

(12) Article 9 *shall be* replaced by the following:

"Article 9

1. For services which are outside the scope of the universal service as defined in Article 3, Member States may introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements.

2. For services which are within the scope of the universal service as defined in Article 3, ***and for services considered to be possible substitutes***, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to safeguard the universal service.

The granting of authorisations may:

- where appropriate, be made subject to universal service obligations,
- if necessary, impose requirements concerning the quality, availability and performance of the relevant services, ***even where they to some extent overlap with universal service obligations;***

- where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanism referred to in Article 7, ***if the provision of the universal service entails a net cost to the universal service provider or providers designated in accordance with Article 4.***

***3. The granting of authorisations for service providers other than designated universal service providers may, where appropriate, be subject to an obligation to make a financial contribution to the sharing mechanism referred to in Article 7.***

***Member States may allow these undertakings to choose between an obligation to contribute to the sharing mechanism or to comply with universal service obligations.***

Except in the case of undertakings that have been designated as universal service providers in accordance with Article 4, authorisations may not:

- be limited in number,

**■**

- impose technical or operational conditions other than those necessary to fulfil the obligations of this Directive.

***4. The procedures, obligations and requirements referred to in paragraphs 1 and 2 shall be transparent, accessible, non-discriminatory, proportionate, precise and unambiguous, made public in advance and based on objective criteria. Member States shall ensure that the reasons for refusing an authorisation in whole or in part are communicated to the applicant and must establish an appeal procedure.***



**5. Member States shall request all operators to fully respect the labour laws to which they are subject, that is any legal or contractual provision concerning employment conditions, working conditions, including health and safety at work and the relationship between employers and workers, which Member States apply in accordance with national law which respects Community law. Equally, Member States shall request the selected operator to fully respect the social security legislation to which it is subject and collective agreements concluded between social partners. "**

(13) Paragraph 1 of Article 10 *shall be* replaced by the following:

"1. The European Parliament and the Council, acting on a proposal from the Commission and on the basis of Articles 47(2), 55 and 95 of the Treaty, shall adopt the measures necessary for the harmonisation of the procedures referred to in Article 9 governing the commercial provision of postal services to the public."

(14) In Article 11, "Articles 57(2), 66 and 100a" *shall be* replaced by "Articles 47(2), 55 and 95".

(15) The following **Articles** 11a **and 11b** *shall be* inserted:

"Article 11a

Whenever necessary to protect the interest of users and/or to promote effective competition, and in the light of national conditions, Member States shall ensure that transparent and non-discriminatory access conditions are available to the following elements of postal infrastructure or services: postcode system, address database, post office boxes, collection and delivery boxes, information on change of address, re-direction service, return to sender service.

### *Article 11b*

*This Directive is without prejudice to relevant national provisions on the protection of personal data, and without prejudice to the rights of Member States to adopt measures to ensure, where appropriate, access to the postal network of universal service providers or other elements of the postal infrastructure under conditions of transparency and non-discrimination."*

(16) Article 12 shall be replaced by the following:

### *"Article 12*

*Member States shall take steps to ensure that the tariffs for each of the services forming part of the provision of the universal service comply with the following principles:*

- prices must be affordable and must be such that all users, ***independent of geographical location, and, in light of specific national conditions,*** have access to the services provided. ***Member States shall publish the rules and criteria for ensuring affordability at national level. National regulatory authorities shall monitor all price changes and shall publish regular reports.*** Member States ***shall ensure the provision of a*** free postal service for blind and partially sighted persons,
- **■** whenever necessary for reasons relating to the public interest, Member States may decide that a uniform tariff should be applied throughout their national territory and/or to the territories of other Member States, ***only*** to services provided at single piece tariff **■**,
- *the application of a uniform tariff does not exclude the right of the universal service provider(s) to conclude individual agreements on prices with customers,*

- *tariffs must be transparent and non-discriminatory,*
- *whenever universal service providers apply special tariffs, for example for services for businesses, bulk mailers or consolidators of mail from different customers, they shall apply the principles of transparency and non-discrimination with regard both to the tariffs and to the associated conditions. The tariffs shall take account of the avoided costs, as compared to the standard service covering the complete range of features offered for the clearance, transport, sorting and delivery of individual postal items and, together with the associated conditions, shall apply equally both as between different third parties and as between third parties and universal service providers supplying equivalent services. Any such tariffs shall also be available to **any other** customer, **in particular individual customers and small and medium-sized enterprises**, who post under similar conditions."*

(17) Article 14 *shall be replaced by the following:*

"Article 14

1. Member States shall take the measures necessary to ensure that the accounting of the universal service providers is conducted in accordance with the provisions of this Article.
2. The universal service providers shall keep separate accounts within their internal accounting systems *in order* to clearly distinguish between services and products which ***are part of the universal service and*** receive or contribute to the financial compensation for the net costs of the universal service ***on the one hand,*** and, ***on the other hand, the*** services and products which ***are*** not. ■ Such internal accounting systems shall operate on the basis of consistently applied and objectively justifiable cost accounting principles.

3. The accounting systems referred to in paragraph 2 shall, without prejudice to paragraph 4, allocate costs in the following manner:

- (a) costs which can be directly assigned to a particular service or product shall be so assigned;
- (b) common costs, that is costs which cannot be directly assigned to a particular service or product, shall be allocated as follows:
  - (i) whenever possible, common costs shall be allocated on the basis of *a* direct analysis of the origin of the costs themselves;
  - (ii) when *a* direct analysis is not possible, common cost categories shall be allocated on the basis of an indirect linkage to another cost category or group of cost categories for which a direct assignment or allocation is possible; the indirect linkage shall be based on comparable cost structures;
  - (iii) when neither direct nor indirect measures of cost allocation can be found, the cost category shall be allocated on the basis of a general allocator computed by using the ratio of all expenses directly or indirectly assigned or allocated, on the one hand, to each of the universal services and, on the other hand, to the other services;
  - (iv) ***common costs, which are necessary for the provision of both universal services and non-universal services, shall not be entirely allocated to universal services; the same cost drivers must be applied to both universal services and non-universal services.***

4. Other cost accounting systems may be applied only if they are compatible with paragraph 2 and have been approved by the national regulatory authority. The Commission shall be informed prior to their application.

5. National regulatory authorities shall ensure that compliance with one of the cost accounting systems described in paragraphs 3 or 4 is verified by a competent body which is independent of the universal service provider. Member States shall ensure that a statement concerning compliance is published periodically.

6. The national regulatory authority shall keep available, to an adequate level of detail, information on the cost accounting systems applied by a universal service provider, and shall submit such information to the Commission on request.

7. On request, detailed accounting information arising from these systems shall be made available in confidence to the national regulatory authority and to the Commission, ***in accordance with Article 22a.***

8. Where a given Member State has not established a financing mechanism for universal service provision, as permitted under Article 7, and where the national regulatory authority is satisfied that none of the designated universal service providers in that Member State is in receipt of State assistance, hidden or otherwise, and that competition in the market is fully effective, the national regulatory authority may decide not to apply the requirements of this Article. ***This Article shall, however, apply to incumbent universal service providers so long as no other universal service providers have been appointed.*** The national regulatory authority shall inform the Commission in advance of taking any such decision."

(18) Article 19 *shall be* replaced by the following:

"Article 19

1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by ***all*** undertakings providing postal services for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

2. Member States shall adopt measures to ensure that the procedures referred to in *paragraph 1* enable disputes to be settled fairly and promptly with provision ■ for a system of reimbursement and/or compensation.

3. Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between undertakings providing postal services and consumers.

4. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing services within the scope of the universal service have not been satisfactorily resolved.

5. In accordance with Article 16, Member States shall ensure that the universal service providers and, where appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.

(19) Article 21 *shall be* replaced by the following:

"Article 21

1. The Commission shall be assisted by a committee.

2. Where reference is made to this Article, *Article 5a(1) to (4)* and *Article 7* of Decision 1999/468/EC shall apply, *having regard to the provisions of Article 8 thereof.*"

||

(20) Article 22 *shall be* replaced by the following:

"Article 22

1. Each Member State shall designate one or more national regulatory authorities for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of undertakings providing postal services shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the Commission which national regulatory authorities they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by national regulatory authorities in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between those authorities and national authorities entrusted with the implementation of competition law and consumer law, on matters of common interest.

2. The national regulatory authorities shall *be given the* particular task of ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures *in order* to ensure the provision of the universal service. They may also be charged with ensuring compliance with *the* competition rules in the postal sector.

The national regulatory authorities of the Member States shall work in close collaboration and shall provide mutual assistance in order to facilitate *the* application of this Directive.

3. Member States shall ensure that effective mechanisms exist at national level under which any user or undertaking providing postal services || affected by a decision of a national regulatory authority has the right to appeal against the decision to an appeal body which is independent of the parties involved. Pending the outcome of any such appeal, the decision of the national regulatory authority shall stand, unless the appeal body decides otherwise."

(21) After Article 22, the following Chapter title *shall be* inserted:

"CHAPTER 9a

Provision of information".

(22) The following Article 22a *shall be* inserted:

"Article 22a

1. Member States shall ensure that ***postal service providers*** provide all the information ***to the national regulatory authority***, including financial information and information about the provision of the universal service, *in order that* national regulatory authorities || ensure conformity with the provisions of, or decisions made in accordance with, this Directive.

■

2. ***All*** undertakings shall, *upon request*, provide such information promptly and ***in confidence, where necessary***, within the timescales and to the level of detail required by the national regulatory authority. The information requested by the national regulatory authority shall be proportionate to the performance of its tasks ***and it shall not be used for purposes other than those for which it was requested***. The national regulatory authority shall give the reasons justifying its request for information."



- (23) Article 23 *shall be* replaced by the following:

"Article 23

Every **four** years, on the first occasion no later than 31 December 2011, the Commission shall submit a report to the European Parliament and the Council on the application of this Directive, including the appropriate information about developments in the sector, particularly concerning economic, social, employment patterns and technological aspects, as well as about *the* quality of service. The report shall be accompanied where appropriate by proposals to the European Parliament and the Council.

*A separate report on general employment trends in the sector and on the working conditions applied by all operators in every Member State shall be submitted no later than three years from the date of the opening up of the market to competition. The report shall also give an account of measures adopted through legislation or negotiation between the social partners. If the report reveals distortions of competition, it shall, if appropriate, also make proposals."*

- (24) *The following Article 23a shall be inserted:*

*"Article 23a*

*The Commission shall provide assistance to the Member States on the implementation of this Directive, including guidance on the calculation of any net cost, before 1 January 2009. Member States shall present to the Commission their financing plans as referred to in Article 7(4) and may present studies."*

- (25) Article 26 *shall be* deleted.

- (26) Article 27 *shall be* deleted.

## Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by **31 December 2009** at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields covered by this Directive.

## Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

## Article 4

This Directive is addressed to the Member States.

Done at ||,

For the European Parliament  
The President

For the Council  
The President